

A **Dato' Wong Tuck Meng & Ors v Topsolid Portfolio Sdn Bhd**

B HIGH COURT (KUALA LUMPUR) — CIVIL SUIT
NO WA-22NCvC-49-01 OF 2021
RAJA AHMAD MOHZANUDDIN SHAH JC
4 OCTOBER 2024

C *Tort — Nuisance — Unlawful interference with land — Plaintiff claimed defendant unlawfully discharged or released or caused to be discharged or released water or waste from defendant's fish ponds onto plaintiff's property — Whether defendant unlawfully released or discharged or caused to be released and/or discharged fish ponds water from its land onto plaintiff's land — Whether defendant's acts caused plaintiff's land to flood, resulting in fruit trees being damaged — Whether defendant's acts constituted nuisance and trespassing onto plaintiff's property*

E The plaintiff owned a piece of land which was used for agricultural purposes and was being planted with fruit trees. The defendant owned a piece of land also expressly designated for agricultural use and it was used for fish ponds. The plaintiff's and defendant's lands were adjacent. In his suit against the defendant, the plaintiff claimed that his land was flooded sometime in May 2020, causing soil erosion and trees to fall. Following further investigation, the plaintiff found that the defendant had built waterways and piping systems to discharge water and waste from the defendant's fish ponds onto the plaintiff's property. The plaintiff considered this to be a nuisance. On the other hand, the defendant claimed that the fish ponds were constructed before the plaintiff purchased the land. In turn, the water from the fish ponds was released through a waterway or small river that passed through the plaintiffs' land by making use of the defendant's piping and water flow system. The defendant further claimed that it already had piping and water flow systems in place or existed prior to the plaintiff's occupation of his land. However, this did not cause any flood as alleged by the plaintiff. Further, the defendant claimed that the plaintiff had consented or that the defendant had acquired an easement on its piping and water flow system even before the plaintiff moved in. The plaintiff sought: (a) a declaration that the defendant trespassed or encroached onto the plaintiff's land or caused to be trespassed or encroached onto the plaintiff's land by building piping and waterways from the defendant's land to the plaintiff's land; (b) a declaration that the defendant unlawfully discharged or released or caused to be discharged or released water or waste from the defendant's fish ponds onto the plaintiff's property; and (c) an injunction to restrain the defendant from committing any further unlawful acts and remove any items that act as a cause of the unlawful acts.

Held, dismissing the claim:

- (1) There was indeed a water pipe system releasing wastewater flowing through the plaintiff's land, which was eventually released through the alleged drainage, stream, or small river on the plaintiff's land. However, the plaintiff's cause of action was not per se dependent on the existence of waterways or piping systems in his property. The plaintiff had not been able to satisfy his burden of proof by providing any concrete evidence to prove that the flood that damaged his property was caused by the discharge of wastewater from the defendant's property. Even if there was a flood, so many factors and possibilities could contribute to it. Additionally, given the conflicting testimonies of witnesses, it was difficult to conclude that there were fallen fruit trees as a result of the flood in the first place. Even if a flood occurred on the plaintiff's land, it could have been caused by fast-flowing natural water gushing from higher ground areas within the forest reserved area directly onto the defendant's property and subsequently straight into the plaintiff's property. None of the plaintiff's witnesses could prove that the defendant caused any of the alleged damages. The plaintiff's photographs were not credible enough to show that the alleged water originated on the defendant's property. Accordingly, the plaintiff had failed to show any connection between the alleged nuisance on the defendant's part and the alleged damages to his property. In light of this, the plaintiff was also not entitled to rely on the *res ipsa loquitur* doctrine. Similarly, the issue of whether or not the defendant had an easement over its piping and water flow system, which no longer existed on the plaintiff's land, was irrelevant. There was also no reason to delve further into the claims of damages. It was clear, however, that the plaintiff had failed to prove damages as claimed (see paras 25, 30, 37, 39 & 46–49).

[Bahasa Malaysia summary]

Plaintif memiliki sebidang tanah yang digunakan untuk tujuan pertanian dan telah ditanam dengan pokok buah-buahan. Defendan juga memiliki sebidang tanah yang secara jelas dinyatakan untuk penggunaan pertanian dan ia digunakan untuk kolam ikan. Tanah plaintiff dan defendan adalah bersebelahan. Dalam samannya terhadap defendan, plaintiff mendakwa bahawa tanahnya telah dinaiki air pada suatu ketika pada bulan Mei 2020, menyebabkan hakisan tanah dan pokok tumbang. Selepas siasatan lanjut, plaintiff mendapati bahawa defendan telah membina saluran dan sistem paip untuk mengalirkan air dan sisa dari kolam ikan defendan ke hartanah plaintiff. Plaintiff menganggap ini sebagai suatu kacau ganggu. Sebaliknya, defendan mendakwa bahawa kolam ikan telah dibina sebelum plaintiff membeli tanah tersebut. Seterusnya, air dari kolam ikan dilepaskan melalui saluran air atau sungai kecil yang melintasi tanah plaintiff dengan menggunakan sistem paip dan aliran air defendan. Defendan selanjutnya menyatakan bahawa ia sudah

- A mempunyai sistem paip dan aliran air sebelum plaintif menduduki tanahnya. Namun, ini tidak menyebabkan sebarang banjir seperti yang didakwa oleh plaintif. Tambahan pula, defendan mendakwa bahawa plaintif telah memberi persetujuan atau bahawa defendan telah memperoleh hak laluan ke atas sistem paip dan aliran airnya walaupun sebelum plaintif berpindah. Plaintif
- B memohon: (a) pengisytiharan bahawa defendan telah menceroboh atau melanggar tanah plaintif atau menyebabkan pencerobohan atau pelanggaran tanah plaintif dengan membina paip dan saluran dari tanah defendan ke tanah plaintif; (b) pengisytiharan bahawa defendan secara tidak sah telah mengalirkan atau melepaskan atau menyebabkan air atau sisa dari kolam ikan
- C defendan ke hartanah plaintif; dan (c) satu injunksi untuk menghalang defendan daripada melakukan sebarang tindakan selanjutnya menyalahi undang-undang dan membuang apa-apa perkara yang menjadi punca tindakan menyalahi undang-undang tersebut.

D **Diputuskan**, menolak tuntutan:

- (1) Terdapat sistem paip air yang mengeluarkan air sisa yang mengalir melalui tanah plaintif, yang akhirnya dikeluarkan melalui saluran, alur, atau sungai kecil yang didakwa di tanah plaintif. Namun, kausa tindakan
- E plaintif tidak sepenuhnya bergantung kepada kewujudan saluran air atau sistem paip di hartanahnya. Plaintif tidak dapat memenuhi beban buktinya dengan memberikan apa-apa bukti konkrit untuk membuktikan bahawa banjir yang merosakkan hartanahnya disebabkan oleh pengeluaran air sisa dari hartanah defendan. Walaupun berlaku
- F banjir, terdapat banyak faktor dan kemungkinan yang boleh menyumbang kepada kejadian tersebut. Tambahan pula, memandangkan keterangan yang bertentangan daripada saksi, adalah sukar untuk merumuskan bahawa terdapat pokok buah-buahan yang tumbang akibat banjir tersebut. Walaupun banjir berlaku di tanah
- G plaintif, ia mungkin disebabkan oleh air semula jadi yang mengalir deras dari kawasan tanah tinggi dalam kawasan hutan simpan terus ke hartanah defendan dan seterusnya terus ke hartanah plaintif. Tiada mana-mana saksi plaintif yang dapat membuktikan bahawa defendan menyebabkan mana-mana kerosakan yang didakwa. Gambar-gambar
- H plaintif tidak cukup boleh dipercayai untuk menunjukkan bahawa air yang didakwa berasal dari hartanah defendan. Oleh itu, plaintif telah gagal menunjukkan sebarang kaitan antara kacau ganggu yang didakwa daripada pihak defendan dan kerosakan yang didakwa terhadap hartanahnya. Sehubungan itu, plaintif juga tidak boleh bergantung
- I kepada doktrin res ipsa loquitur. Begitu juga, isu sama ada defendan mempunyai hak laluan ke atas sistem paip dan aliran airnya, yang tidak lagi wujud di tanah plaintif, adalah tidak relevan. Tiada juga sebab untuk menyelidiki lebih lanjut tentang tuntutan ganti rugi. Walau bagaimanapun, adalah jelas bahawa plaintif telah gagal membuktikan

ganti rugi seperti yang didakwa (lihat perenggan 25, 30, 37, 39 & 46–49).]

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Cases referred to

Chin Moy Yen & Ors v Chai Weng Sing & Ors [2019] MLJU 681, CA (refd)

Rylands and another v Fletcher [1861–73] All ER Rep 1, HL (refd)

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Tey Moon Kim v Hon Siew Mei [2013] 7 MLJ 528, HL (refd)

Legislation referred to

Limitation Act 1953 s 6(1)

C

Rozilan bin Abdul Rahman (Omar Ismail Hazman & Co) for the plaintiff.

Lye Wing Voi (WV Lye & Partners) for the defendant.

Raja Ahmad Mohzanuddin Shah JC:

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PRELIMINARY

[1] In this suit filed by the plaintiff against the defendant, the plaintiff seeks a declaration that the defendant trespassed or encroached onto the plaintiffs land or caused to be trespassed or encroached onto the plaintiffs land by building piping and waterways from the defendant's land to the plaintiffs land.

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[2] Further, the plaintiff is seeking a declaration that the defendant unlawfully discharged or released or caused to be discharged or released water or waste from the defendant's fish ponds onto the plaintiffs property.

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[3] Along with those declarations, the plaintiff is seeking an injunction to restrain the defendant from committing any further unlawful acts and remove any items that act as a cause of the unlawful acts.

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AN OVERVIEW OF THE FACTS OF THE CASE

[4] The plaintiff owns a piece of land known as Hakmilik No PM 147, Lot No 4584, Kg Sungai Tekali Part II, Daerah Hulu Langat, Mukim Hulu Langat, Negeri Selangor Darul Ehsan measuring 2.362 hectares ('Lot 4584/plaintiffs land').

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[5] According to the plaintiff, he is using Lot 4584 for agricultural purposes.

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[6] The defendant owns a piece of land known as Hakmilik PM 212, Lot No 4585, Kg Sungai Tekali, Daerah Hulu Langat, Mukim Hulu Langat, Negeri Selangor Darul Ehsan measuring 2.2205 hectares ('Lot 4585/defendant's land').

A [7] The defendant's land is also expressly designated for agricultural use, specifically rubber plantations.

[8] Lot 4584 and Lot 4585 are adjacent.

B [9] The terrain of Lot 4585 is higher than that of Lot 4584.

[10] Lot 4584 is being planted with fruit trees.

C [11] As for Lot 4585, it is used for fish ponds.

ISSUES TO BE TRIED

D [12] For the purposes of resolving this dispute, the court finds the following common issues relevant and sufficient:

(a) whether the defendant unlawfully released or discharged or caused to be released and/or discharged the fish ponds water from its land onto the plaintiffs land?

E (b) whether those acts caused the plaintiffs land to flood, resulting in fruit trees being damaged?

(c) whether those acts constituted a nuisance and trespassing onto the plaintiffs property?

F (d) whether the plaintiff consented to and/or the defendant had an easement on the pipes and waterways system before the plaintiffs occupation of Lot 4584? and

G (e) whether the plaintiff is entitled to an injunction restraining the defendant from committing further unlawful acts and removing any items contributing to the unlawful acts?

COURT'S ANALYSIS AND FINDINGS

H [13] In his suit against the defendant, the plaintiff claims that his land was flooded sometime in May 2020, causing soil erosion and trees to fall. Following further investigation, the plaintiff found that the defendant had built waterways and piping systems to discharge water and waste from the defendant's fish ponds onto the plaintiffs property. The plaintiff considered this to be a nuisance.

I [14] On the other hand, the defendant claims that the fish ponds were constructed before the plaintiff purchased the land. In turn, the water from the fish ponds was released through a waterway or small river that passed through

the plaintiffs land by making use of the defendant's piping and water flow system.

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[15] For that purpose, the defendant further claims that it already had piping and water flow systems in place or existed prior to the plaintiffs occupation of his land. However, this did not cause any flood as alleged by the plaintiff. If there was a flood, it was caused by heavy rain or rainwater flowing freely from the nearby hill onto the defendant's land and subsequently inundating the plaintiff's property.

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[16] Further, the defendant claims that the plaintiff had consented or that the defendant had acquired an easement on its piping and water flow system even before the plaintiff moved in. Regardless, the defendant had established a new waterway using its own costs and expense to discharge or release the waters from the fish ponds in other ways that would not affect the plaintiffs land.

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[17] Now that both sides have presented their positions, the court will examine them.

[18] To this end, given all the facts before the court, the court must determine whether the defendant engaged in unlawful acts on the plaintiff's land as a result of trespass or encroachment. If the answer is affirmative, the plaintiff must then prove that the said unlawful acts caused the plaintiffs land to be flooded, which would ultimately result in the plaintiff suffering losses or damages.

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[19] As for this aspect, the defendant takes the view that even if the plaintiff may be able to demonstrate nuisance on the plaintiff's land by virtue of the water discharged from the defendant's pipe and then flowing to the plaintiffs land prior to the date of the defendant's pipe diversion in April 2021, the plaintiff has failed to demonstrate causation of the allegation of flood which caused the alleged damage to the land.

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[20] The analysis of nuisance between neighbouring properties would not be complete without mentioning the locus classicus case of *Rylands and another v Fletcher* [1861–73] All ER Rep 1. The legal foundation for such a claim was laid by Lord Blackburn J, which held that anyone who brings or accumulates anything on his land that may cause damage to his neighbour does so at his own risk. In this regard, however careful he may have been and whatever precautions he has taken to prevent damage from happening, he is responsible if such a thing escapes and causes damage. The following is what His Lordship observed in detail at p 6:

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The question of law, therefore, arises: What is the liability which the law casts upon

- A a person who, like the defendants, lawfully brings on his land something which, though harmless while it remains there, will naturally do mischief if it escape out of his land? It is agreed on all hands that he must take care to keep in that which he has brought on the land, and keep it there in order that it may not escape and damage his neighbour's, but the question arises whether the duty which the law casts upon him under such circumstances is an absolute duty to keep it in at his peril, or is, as the majority of the Court of Exchequer have thought, merely a duty to take all reasonable and prudent precautions in order to keep it in, but no more. If the first be the law, the person who has brought on his land and kept there something dangerous, and failed to keep it in, is responsible for all the natural consequences of its escape. If the second be the limit of his duty, he would not be answerable except on proof of negligence, and consequently would not be answerable for escape arising from any latent defect which ordinary prudence and skill could not detect. Supposing the second to be the correct view of the law, a further question arises subsidiary to the first, namely, whether the defendants are not so far identified with the contractors shorn they employed as to be responsible for the consequences of their want of skill in making the reservoir in fact insufficient with reference to the old shafts, of the existence of which they were aware, though they had not ascertained where the shafts went to.
- D We think that the true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient. The general rule, as above stated, seems on principle just. The person whose grass or corn is eaten down by the escaped cattle of his neighbour, or whose mine is flooded by the water from his neighbour's reservoir, or whose cellar is invaded by the filth of his neighbour's privy, or whose habitation is made unhealthy by the fumes and noisome vapours of his neighbour's alkali works, is damnified without any fault of his own; and it seems but reasonable and just that the neighbour who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows will be mischievous if it gets on his neighbour's, should be, obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there no mischief could have accrued, and it seems but just that he should at his peril keep it there, so that no mischief may accrue, or answer for the natural and anticipated consequences. On authority this, we think, is established to be the law, whether the thing so brought be beasts or water, or filth or stench.
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- I [21] In a decision closer to home, Her Ladyship Mary Lim Thiam Suan JCA (as Her Ladyship then was) distinguished between a public nuisance and a private nuisance in *Chin Moy Yen & Ors v Chai Weng Sing & Ors* [2019] MLJU 681:

[39] On the other hand, when it comes to nuisance, the same authors at para 20–01,

- p 1396, explained that ‘nuisance is an act or omission which is an interference with, disturbance of or annoyance to a person in the exercise or enjoyment of: (a) a right belonging to him as a member of the public, when it is a public nuisance; or (b) his ownership or occupation of land or of some easement, profit, or other right used or enjoyed in connection with land, when it is a private nuisance.’ The ‘essence of nuisance is a condition or activity which unduly interferes with the use or enjoyment of land.’ Thus, smells, speech, noise or smoke and the like ‘may amount to a nuisance in fact but whether they are actionable as the tort of nuisance will depend on a variety of considerations and a balancing of conflicting interests’.
- [40] In the case of private nuisance, as opposed to public nuisance where the act is *inter alia* not warranted by law, the conduct or act of the defendant which results in the private nuisance is not necessarily unlawful. The defendant may be ‘doing on his own land something which he is lawfully entitled to do. His conduct only becomes a nuisance when the consequences of his acts are not confined to his own land but extend to the land of his neighbour by: (1) causing an encroachment on his neighbour’s land, when it closely resembles trespass; (2) causing physical damage to his neighbour’s land or building or works or vegetation upon it; or (3) unduly interfering with his neighbour in the comfortable and convenient enjoyment of his land.
- [22] As a starting point, there is a preliminary issue regarding limitation under s 6(1) of the Limitation Act 1953 pertaining to the plaintiff’s current claim. This issue came about as a result of the defendant’s argument that the plaintiff was aware of the water flowing from the defendant’s land from as far back as 2010 as opposed to the purported discovery in May 2020. According to the defendant, as the action was filed on 29 February 2021, limitation had already occurred when this action was filed.
- [23] As a result of analysing the facts of this case, the court concludes that the plaintiffs cause of action is not time-barred. This is due to the plaintiffs allegation that continuous floodings had occurred until May 2020 due to wastewater discharge or release. This, however, will still depend on the merits of the plaintiffs claim. This would allow the court to determine what caused the flooding in a later analysis of the issues.
- [24] In the next step, the court will proceed to the substance of the merits of the case.
- [25] As a result of reviewing the evidence during the trial, the court can safely conclude that there was indeed a water pipe system releasing wastewater flowing through the plaintiffs land, which was eventually released through the alleged drainage, stream, or small river on the plaintiffs land.
- [26] The issue does not end here, however. A further investigation is needed to determine whether the defendant’s alleged act or system interfered with and

A disrupted the plaintiffs enjoyment of his land in accordance with the plaintiffs pleaded complaint as narrated above, resulting in flooding, soil erosion to the land, and damage to the plaintiffs fruit trees. Specifically, was there an element of a private nuisance in the complaint made by the plaintiff?

B [27] First and foremost, it becomes imperative to examine the plaintiffs legal position with regard to his cause of action as a catalyst for analysis by this court.

C [28] In this regard, it is trite that the plaintiff has the burden of proving his case, as well as introducing evidence. As soon as the plaintiff has discharged these two-fold burdens, only then would the defendant be able to present its side of the case, since that burden has been shifted to the defendant. The defendant would only be spared the burden of establishing its evidence if the plaintiff failed to prove his burden in the first place.

D [29] The above principle can be found in the judgment of His Lordship Vernon Ong J (as His Lordship then was) in *Tey Moon Kim v Hon Siew Mei* [2013] 7 MLJ 528, specifically at pp 537–538:

E [23] In law, the party who desires the court to give judgment as to any legal right or liability bears the burden of proof (s 101 (1) of the Evidence Act 1950). The burden of proof is on that party is twofold: (i) the burden of establishing a case; and (ii) the burden of introducing evidence. The burden of proof lies on the party throughout the trial. The standard of proof required of the plaintiff is on the balance of probabilities. The evidential burden of proof is only shifted to the other party once that party has discharged its burden of proof. If that party fails to discharge the original burden of proof, then the other party need not adduce any evidence. In this respect it is the plaintiff who must establish its case. If the plaintiff fails to do so, it will not do for the plaintiff to say that the defendant has not established its defence (*Selvadurai v Chinniah* [1939] 1 MLJ 253 (CA); s 102 of the Evidence Act 1950). It should also be noted that there must be some preponderance in the plaintiff's favour at the conclusion of the whole case. Even if the plaintiff established a prima facie case, but at the conclusion of the trial the court found that the position was exactly even, then any preponderance in favour of the plaintiffs had ceased to exist. If that happens, then the plaintiff has failed to discharge the burden of proof which is upon it, and the plaintiff must necessarily fail (*Abrath v The North Eastern Railway Company* (1883) 11 QBD 79 (CA)).

H [24] In this case Lim's evidence has been discounted for the reasons abovementioned. Consequently, there is essentially no other evidence to support the plaintiff's case. The plaintiff has failed to make out a prima facie case. Therefore, the court finds that the plaintiff has clearly failed to satisfy the original burden of introducing evidence to prove her case on the balance of probabilities. In consequence, it is not necessary for the court to consider the question of whether the defendant has established her defence.

I [30] Returning to the plaintiffs cause of action, it relates to the existence of

a flood that was said to have caused damages to the plaintiffs land. Therefore, the court finds that the plaintiffs cause of action is not per se dependent on the existence of waterways or piping systems in his property.

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[31] In light of this trite legal position, a detailed examination is required to determine, based on the balance of probabilities, whether a flood was indeed caused by the defendant that led to soil erosion and damage to the plaintiff's fruit trees. The plaintiffs case ends if there is no sufficient or credible evidence before the court to prove so. If, however, the plaintiff manages to convince the court that these events were directly caused by the defendant, then only the court will consider damages.

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[32] It is now for the court to decide whether it was the wastewater that directly flowed through the defendant's piping water drainage system and waterways that eventually flooded the plaintiff's land.

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[33] The court will begin by reviewing the plaintiff's evidence on this aspect of the issue.

[34] First of all, the plaintiff was aware that the so-called private nuisance existed seven to ten years ago. It is also the same position with regard to the existence of the defendant's piping water drainage system. Those concessions are as admitted by the plaintiff, who is PW1. It is, therefore, not something new that was discovered by the plaintiff in May 2020.

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[35] Additionally, the plaintiff himself agreed to the suggestion that during the heavy rains, muds from his land could flow further down into the waterways, causing land erosion, trees to be damaged, and trees to be felled.

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[36] Next, there is evidence provided by PW4. In this case, PW4 is a licensed land surveyor hired by the plaintiff. In his cross-examination by the defendant's counsel, he admitted that there was another pond located in a forest reserve outside the defendant's property. According to him, the water from the pond, which sits on a higher ground, might have washed onto the defendant's land during heavy rain. Consequently, it is expected that the water would naturally flow onto the plaintiff's property.

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[37] According to the findings above, it appears to the court that the plaintiff had not been able to satisfy his burden of proof by providing any concrete evidence to prove that the flood that damaged his property was caused by the discharge of wastewater from the defendant's property. Even if there is a flood, so many factors and possibilities could contribute to it.

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- A [38] Here, the court observes that if the same things happened some seven to ten years ago, why wouldn't any specific action be taken against the defendant for the alleged private nuisance? It speaks volumes about the entire scenario that unfortunately does not favour the plaintiff's side. The plaintiff appears to have continued to enjoy his property during that period.
- B [39] Additionally, given the conflicting testimonies of witnesses, it is difficult for the court to conclude that there were fallen fruit trees as a result of the flood in the first place.
- C [40] As a first step in this regard, it appears to the court that the plaintiff initially confirmed during cross-examination that he had not given any information to PW2, who is a registered valuer, regarding the number of damaged trees or their age as incorporated in PW2's valuation report dated
- D 5 December 2020 that assessed the damages and losses suffered by the land. The plaintiff claims he did not provide any information to PW2 since PW2 was capable of knowing what needed to be done on his own. The only thing he did was to inform PW2 of the damage to his land, and PW2 then made his own estimate regarding the nature and age of the trees on the basis of that
- E information.
- F [41] However, there is a contradiction here between the content of the Valuation Report which stated explicitly that the plaintiff himself provided the number of trees involved. Additionally, PW2 confirmed that he did not know the age of the trees during his examination in chief and cross-examination.
- G [42] An interesting aspect of the cross-examination later emerged when the plaintiff suddenly admitted he had not remembered what he said to PW2 and that he might have mentioned details about the trees. However, subsequent notes of evidence show that he repeatedly confirmed that he did not tell PW2 the number of trees and that it was based on PW2's observations.
- H [43] In this regard, the important thing to note here is that PW2's field of study is property investment and he does not possess the agricultural expertise to be able to identify the age of the fallen trees and damaged trees in his capacity as a registered valuer. Consequently, if any of these details were provided by the plaintiff, there is nothing in this court's record to support such evidence.
- I [44] Further exploring this issue, PW3's testimony is also unhelpful to the plaintiff. PW3 is a director of a company that provided the plaintiff with a quote for restoring the property to its original condition. To return the land to its original level, he quoted RM416,800 for the sand backfilling work and the cost of the machinery needed to transport and level the soil. Additionally, he

provided a quotation for planting grass and durian on the land, as well as further supervision and maintenance.

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[45] According to the plaintiff, all suggestions regarding the work that needed to be done originated directly from PW3. However, PW3 testified during cross-examination that he did not even have any documentation to show the land's original level. Yet, he was assigned to restore the land to its original level. In fact, PW3 stated that he provided the quotation solely at the plaintiff's request. Moreover, PW3 clarified that he did not even suggest the nature of the repair works. As far as PW3 was concerned, all he did was insert figures and amounts into the quotation.

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[46] As a result of balancing the two versions of facts before the court, the court is inclined to conclude that even if a flood occurred on the plaintiff's land, it could have been caused by fast-flowing natural water gushing from higher ground areas within the forest reserved area directly onto the defendant's property and subsequently straight into the plaintiff's property.

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[47] There is a valid reason for this finding. Due to the lack of concrete or solid evidence, there is nothing the court can use to prove otherwise. In this instant, none of the plaintiff's witnesses could prove that the defendant caused any of the alleged damages. The plaintiff's photographs were not credible enough to show that the alleged water originated on the defendant's property.

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[48] From this perspective, it is difficult for the court to give proper weight or value to conflicting testimonies. Accordingly, the plaintiff has failed to show any connection between the alleged nuisance on the defendant's part and the alleged damages to his property. In light of this, the plaintiff is also not entitled to rely on the *res ipsa loquitur* doctrine. Similarly, the issue of whether or not the defendant has an easement over its piping and water flow system, which no longer exists on the plaintiff's land, is irrelevant. In any event, even if there were none, the findings of this court would not be affected.

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[49] As a result of this, the court does not have any reason to delve further into the claims of damages. It is clear, however, that the plaintiff has failed to prove his damages as he claims, even if the court examines the quantum of damages. From the evidence of PW2 and PW4, it is clear that this is the case.

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CONCLUSION

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[50] In light of this, the court is bound to dismiss the plaintiff's claim with costs of RM40,000, subject to allocatur.

A *Claim dismissed.*

Reported by Nabilah Syahida Abdullah Salleh

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